

# Memorandum

To : COMMISSIONERS  
Delta Protection Commission

Date : January 15, 1993

File No.

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Subject: Summary of Provisions of Delta Protection Act

The purpose of this memorandum is to provide you with an overview of the major features of the Johnson-Baker-Andal-Boatwright Delta Protection Act of 1992. (Cal. Stats. 1992, ch. 898.) The Act is codified at Public Resources Code § 29700 ff., a copy of which is attached for your information.

## Legislative Findings and Declarations

The Act contains a lengthy set of legislative findings and declarations. These are useful both to the Commission as it undertakes its duties, and to guide the judiciary in any future litigation concerning the Act. Among the more critical legislative findings are the following:

- the Sacramento-San Joaquin Delta is "a natural resource of statewide, national, and international significance..." (Public Resources Code § 29701);

- State goals for the Delta include: enhancement and restoration of the Delta environment; balanced conservation and development of Delta land resources; and improved flood protection (§ 29702);

- The agricultural resources of the Delta should be protected (§ 29703);

- The Delta's leveed islands and tracts are at risk due to flooding, and are of critical statewide significance due to the need to protect farmlands, urban centers, water quality and natural resource habitat (§ 29704);

- The resource values of the Delta have deteriorated, and are threatened with further damage (§ 29707);

- The economic values associated with the Delta must be protected (§§ 29708, 29711, 29712); and

- "Regulation of land use and related activities that threaten the integrity of the delta's resources can best be

advanced through comprehensive regional land use planning implemented through reliance on local government..." (\$ 29709(a)).

#### Definitions

The Act contains a series of definitions that apply in interpreting the substantive provisions of the statute. The more significant definitions include: a relatively expansive definition of "development" (\$ 29723); a description of the "Delta" which tracks the definition already found in the Water Code (\$ 29722); and separate definitions of a Delta "primary zone" (\$ 29728) and "secondary zone" (\$ 29731)--a distinction which is important for the Commission's planning functions, as described in further detail below.

#### Organization of the Commission

The Act creates a Delta Protection Commission, composed of 19 voting members:

- five county supervisors (one each from the five counties included within the Delta's "primary zone");

- three city council members from municipalities within the Delta;

- five members selected from the boards of directors of reclamation districts within the Delta;

- six state officials: the Director of Parks and Recreation; the Director of Fish and Game; the Director of Food and Agriculture; the State Lands Commission's Executive Officer; the Director of Boating and Waterways; and the Director of Water Resources (or their designees). (\$ 29735.)

The Commission also has two ex officio (i.e., non-voting) members from the Legislature, one from the State Assembly, the other from the State Senate. (\$ 29740.)

Each commissioner's term of office is four years, with a limitation of two terms for each commissioner. (\$ 29736.) A chairperson and vice chairperson are to be elected from and by the Commission; they each serve in those positions for two-year terms, and may be re-elected. (\$ 29839.) Procedures are established for declaring and filling vacancies on the Commission. (§§ 29738, 29739.)

### Powers and Duties of the Commission

The Act provides the Commission with powers and responsibilities similar to several existing state and regional land use agencies. For example, the Commission must meet at least monthly. (§ 29750.) Ten of the Commission's 19 voting members are required to constitute a quorum of the Commission, and ten affirmative votes are necessary to take formal action as to most Commission matters. (§ 29750.)

The Commission is empowered to: adopt necessary rules and regulations (§§ 29752, 29770(b)); set up an office within the Delta (§ 29754); appoint a Commission executive officer, who in turn is authorized to hire necessary staff and conduct the day-to-day operations of the Commission (§ 29755); and appoint various advisory committees to assist the Commission in its work. (§ 29753.) Some advisory committees are mandatory, others optional. (Ibid.) Commissioners are subject to the provisions of the California Political Reform Act. (Gov. Code § 81000 ff.)

The Commission also is granted the authority to:

- engage in a series of planning functions (§ 29760 et seq., described in greater detail below);
- acquire and administer voluntary wildlife and agricultural conservation easements within the Delta (§ 29756); and
- seek and obtain financing for its operations from federal, state or private sources (§ 29757);

Critically, the Act provides that, absent further legislation, the Commission is abolished ("sunsets") on January 1, 1997.

### Financial Provisions

The Act grants the Commission a one-time loan of \$250,000 from the California Environmental License Plate Fund to cover the Commission's start-up expenses. This loan is to be repaid to the Fund by the Commission no later than December 31, 1998. (Cal. Stats. 1992, ch. 898, § 4.)

A more permanent source of Commission funding is a ten per cent "penalty assessment" on Department of Fish and Game and Department of Boating and Waterways fines assessed within the Delta. (§ 29775.) This funding source is capped at a maximum of \$250,000 per year. (§ 29776.)

The Commission is required to submit a report to the Governor and Legislature by December 31, 1993, on recommended funding sources to replace the penalty assessment described above. (§ 29777.)

Delta Resource Management Plan

The Act's planning provisions include both Commission and local governmental elements. Each is described below.

A. Elements of the Commission Plan

The Commission's central task is the preparation and adoption of "a comprehensive long-term resource management plan for land uses within the primary zone of the delta." (§ 29760(a).) The plan has limited effect in the Commission's secondary zone. (§ 29760(c).) The Commission must adopt the Resource Management Plan by July 1, 1994. (Ibid.) The Plan is to consist of both maps and text "setting forth a description of the needs and goals for the delta and a statement of the policies, standards and elements" of the Plan. (Ibid.)

To guide the Commission in its preparation of the plan, the Act lists 14 diverse "requirements" that the plan is to meet. These requirements include--but are not limited to--protection of the Delta's economic vitality, cultural resources, agricultural viability, wildlife and wetlands habitat, levee systems, recreational values, private property rights, fisheries, navigation, and water quality. (§ 29760(b).)

It appears that the Legislature also intended the Resource Management Plan to incorporate "environmental thresholds." (§ 29780(b).) Finally, the plan is required to include "a strategy for the implementation of a coordinated marine patrol system throughout the delta..." (§ 29760(d).)

B. Commission Review of Local Government General Plans

Once the Commission has adopted its Resource Management Plan, each of the local governments within the Delta is required to conform its own general plan to the provisions of the Commission Plan. Within 180 days of Commission adoption of the Resource Management Plan, each such local government must: a) develop propose amendments to its general plan to conform to the Commission plan; and b) submit those proposed amendments to the Commission for review. (§ 29763.) The general plan amendments need not encompass lands outside the Delta's primary zone. (§§ 29762, 29764.)

The Commission then has 60 days to review and approve or reject those proposed local government amendments. (§ 29763.5.) The Act provides that the Commission may approve a local government's proposed general plan amendments only if the Commission finds, based on substantial evidence in the administrative record before it, that each such set of amendments satisfies 11 separate statutory criteria. (§ 29763.5(a) - (k).) Perhaps the most important requirement is that "[t]he general plan, and any

development approved or proposed that is consistent with the plan, are consistent with the [Commission's] regional plan." (§ 29763.5(a).) Other specific mandates include (but are not limited to) the requirement that any draft, amended general plan or any development proposed under such a general plan: not result in wetland or riparian loss; not degrade the Delta's water quality; not threaten Delta wildlife resources; not infringe on private property rights; not increase flood hazards or impair levee integrity; and not adversely affect agricultural operations. (§ 29763.5.)

Local governments must then adopt their proposed general plan amendments within 60 days of the Commission's approval of those amendments. (§ 29763.8.)

The Act contains a partial moratorium on development in the Delta's primary zone, pending the conclusion of the planning activities summarized above. Until the Commission completes its Resource Management Plan and ratifies a local government's conforming general plan amendments, that local government can only approve a development project within the Delta's primary zone if it finds--in writing and based on substantial evidence--that the development will not result in any of several specified adverse environmental, economic or safety impacts. (§ 29765.)

#### Appellate Jurisdiction of the Commission

The Act provides that "any person aggrieved by any action taken by a local government" under the Act may file an administrative appeal with the Commission. (§ 29770(a).) The Commission's appellate jurisdiction extends only to resource impacts within the Delta's primary zone. (Ibid.) The Commission, in turn, is to determine in such an appeal whether the local governmental action is inconsistent with the Resource Management Plan, the local government's implementing general plans, or the Act itself. (Ibid.)

The Commission is obligated to hear and act on any such appeal within 60 days of its filing. (Ibid.)

The Commission has two options in hearing such an appeal. First, it can deny the appeal. Alternatively, it can remand the challenged decision to the local government involved. That local government then has an opportunity to modify the challenged action and resubmit it for Commission approval. (§ 29771.)

While this appellate process is underway, and until the Commission adopts findings that the challenged local governmental action is consistent with the Commission's Resource Management Plan and the approved, amended local general plan, the local development approval is ineffective and may not be relied upon by the developer. (Ibid.)

### Judicial Review

The Act provides that any "aggrieved person" may seek judicial review of:

- a) the Commission's adoption of its Resource Management Plan; and
- b) any local governmental action taken under the Act.

(§ 29772.) Any such lawsuit must be filed within 60 days of the governmental action being challenged in court. (Ibid.)

### Annual Report

Beginning on January 1, 1995, and annually thereafter, the Commission is required to submit an annual report to the Governor and Legislature. Each annual report is to describe the progress state and local governments have made in achieving the objectives of the Act and the Commission's Resource Management Plan.

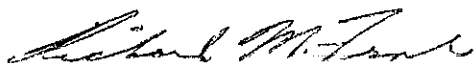
### Miscellaneous Provisions

The Act exempts from the requirements of the California Environmental Quality Act (CEQA) local governments' preparation of general plan amendments in conformance of the Commission's Resource Management Plan. The Commission's review of those general plan amendments, however, is subject to CEQA. (Cal.Stats. 1992, ch. 898, §1.)

### Conclusion

This memorandum is intended to provide a general overview of the Delta Protection Act. As the Commission undertakes its important responsibilities, other, specific questions will undoubtedly arise concerning the requirements and proper interpretation of the Act.

Please feel free to address any such inquiries to this office. We will do our utmost to address them in a satisfactory and timely manner.



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